

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

|                            |   |  |
|----------------------------|---|--|
| <b>In Re:</b>              | ) |  |
|                            | ) |  |
| <b>Ronald Lamar Mixon,</b> | ) | <b>Case No.: 13-30058</b>                  |
| <b>Judy Dugan Mixon</b>    | ) |  |
|                            | ) |  |
|                            | ) | <b>Chapter 13</b>                          |
|                            | ) |  |
| <b>Debtors.</b>            | ) | <b>MOTION TO MODIFY PLAN</b>               |
|                            | ) | <b>-To Amend Schedule A</b>                |
|                            | ) | <b>-To Amend Claim of Exempt Property</b>  |
|                            | ) | <b>-To Strike Claims of CitiMortgage</b>   |
|                            | ) | <b>-To Approve Pay-off of 910 Claim</b>    |
|                            | ) | <b>of Santander</b>                        |
|                            | ) | <b>-To Surrender 2007 Dodge Caravan to</b> |
|                            | ) | <b>Premier Federal Credit Union</b>        |
|                            | ) | <b>-To Strike Secured Claim of</b>         |
|                            | ) | <b>Premier Federal Credit Union</b>        |
|                            | ) | <b>-To Modify Plan Payment and</b>         |
|                            | ) | <b>Plan Base</b>                           |
|                            | ) | <b>-To Amend Non-Base Fee</b>              |

**NOW COMES DEBTOR** by and through his attorney, Geoffrey A. Planer, and moves to modify his Chapter 13 Plan to (a) amend Schedule A; (b) amend claim of exempt property; (c) strike the claims of CitiMortgage; (d) strike the secured claim of Premier Federal Credit Union; (e) surrender the 2007 Dodge Caravan vehicle; (f) approve pay-off of 910 claim of Santander; (g) modify plan payment and plan base; and (h) amend non-base fee. In support hereof, Debtor shows unto the Court:

1. Debtor filed a joint petition with his spouse on January 14, 2013, and his Plan was thereafter confirmed.
2. Post-confirmation, Debtor's spouse, co-Debtor herein Judy Mixon, died.
3. As a result of the death of his spouse, the Debtor's family income has been reduced more than half as can be readily discerned from the information in Debtor's originally riled Schedule I.
4. Upon his wife's death, Debtor discovered the existence of a credit life insurance policy written in connection with the mortgage on Debtor's home. Such credit life insurance will pay \$60,000 in benefits as a result of the death of Mrs. Mixon, paying-off the presently existing loan balance of approximately \$33,500 and then paying the remaining balance of \$26,500 to Debtor.

5. Debtor is informed, believes and so alleges that the \$26,500 should be deemed replacement income, replacing the \$1,786.00 per month that was the wife's family purpose income received by her during this case each month while she was alive.
6. Debtor believes that he is presently and as a result of the death of his spouse, the sole owner of the residential realty, formerly owned by him and his wife as tenants by the entireties.
7. In his schedules filed herein, Debtor valued his ownership interest in the residential realty at \$75,000.00.
8. Because of his age (over 70 years), Debtor is entitled to a total of \$60,000.00 as his residential realty exemption under NCGS § 1C-1601(a)(1).
9. For Plan calculation purposes, Debtor believes that the value of non-exempt equity in his residential realty is no more than \$7,500.00.
10. Debtor moves the Court to amend his Schedule A to disclose his full ownership interest in his residential realty, and further to amend his Schedule C to claim a \$60,000.00 exemption therein pursuant to NCGS § 1C-1601(a)(1).
11. Debtor moves the Court to modify his Plan to remove from his Plan all claims, conduit and arrears, to his mortgage claimant and disclose the full payment of the remaining balance owed on his residence via the aforementioned credit life insurance.
12. Because Debtor has been left with a greatly diminished income, he further seeks authority to modify his Plan to surrender the 2007 Dodge Caravan to Premier Federal Credit Union, the secured claimant holding a first lien interest therein.
13. Further, in order to reduce his on-going Plan payments, Debtor moves to modify his Plan by paying-off the secured claim of Santander Consumer respecting the 2011 Chevrolet HHR vehicle.
14. Further, and as a result of Debtor's reduced income, the proposed surrender of the Dodge Caravan vehicle, the removal of all mortgage-related claims from his Plan, the proposed pay-off of the secured claim of Santander with using a portion of the remaining credit life insurance proceeds, Debtor proposes a Plan payment of \$435.00.
15. Debtor believes that his proposed modified Plan meets all requirements for confirmation of a Chapter 13 Plan.
16. Geoffrey A. Planer, attorney for Debtor, has performed valuable legal services to Debtor respecting the preparation and prosecution of this Motion. Such attorney is entitled to the

awarding of a non-base fee of \$350.00, plus reimbursement of copy and postage costs of \$50.00, a total of \$400.00, to be paid via Debtor's Plan.

**WHEREFORE, DEBTOR PRAYS THE COURT**

1. That the Court approve Debtor's amending is Schedule A and C to claim his newly acquired ownership interest in realty and to claim \$60,000.00 in equity therein.
2. That this Court enter an Order that the insurance proceeds anticipated to be received by Debtor from the credit life insurance on his spouse, \$26,500.00, be deemed replacement income as contemplated by the 4<sup>th</sup> Circuit Goralski decision, and this client's decision in In Re Griffin Case No. 04-32325.
3. That the Court authorize Debtor to pay-off via the Plan the secured claim of Santander using insurance proceeds from the credit life insurance policy mentioned hereinabove.
4. That all mortgage-related claims, both conduit and arrears, be stricken from Debtor's Plan as being satisfied otherwise by the credit life insurance payment.
5. That Debtor's Plan be further modified to provide for monthly plan payments of \$435.00, and that his Plan base be modified accordingly.
6. That Geoffrey A. Planer be awarded a non-base fee of \$350.00, plus copy and postage costs of \$50.00, a total of \$400.00, to be paid via Debtor's Plan.
7. And for such other and further relief as to the Court may seem just and proper.

Dated: May 14, 2013

By: \_\_\_\_\_  
Geoffrey A. Planer, Attorney for Debtor(s)  
N.C. State Bar No.: 6338  
216 South Marietta St. / P.O. Box 1596  
Gastonia, NC 41053-1596  
Phone: (704) 864-0235 / Fax: (704) 864-3396

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

In Re: )  
 )  
Ronald Lamar Mixon, ) Case No.: 13-30058  
Judy Dugan Mixon, )  
 )  
 )  
 ) Chapter 13  
 )  
 )  
 ) NOTICE OF HEARING  
DEBTOR(S). ) (NO RESPONSE REQUIRED)

TAKE NOTICE that Debtors have filed papers with the Court to modify their Plan. A copy of Debtors' Motion accompanies this Notice.

**TAKE NOTICE THAT YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)**

TAKE NOTICE that if you do not want the Court to allow the Motion to Modify, or if you want the Court to consider your views on the Motion, then on or before May 29, 2013, you or your attorney may:

- 1) File with the Court a written Response (an answer, explaining your position) at:

Office of the Bankruptcy Clerk  
United States Bankruptcy Court  
401 West Trade Street  
Charlotte, NC 28202

If you mail your Response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the date stated above.

- 2) If you file a Response, you must also mail a copy to:

Geoffrey A. Planer, Esq.  
Post Office Box 1596  
Gastonia, North Carolina 28053-1596

- 3) A hearing will be held on: **June 11, 2013 at 2:00 p.m.** at the Bankruptcy Courtroom at U. S. Federal Courthouse, 401 West Trade Street, Courtroom #126, Charlotte, North Carolina. Any interested party may appear thereat and be heard.

**All interested parties may attend and be heard. (If you do not oppose this Motion, you do not have to attend.)**

TAKE FURTHER NOTICE that **if you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.**

Dated this the 14th day of May, 2013.

By: \_\_\_\_\_  
Geoffrey A. Planer, Attorney for Debtor(s)  
N.C. State Bar No.: 6338  
216 South Marietta St. / P.O. Box 1596  
Gastonia, NC 28053-1596  
Phone: (704) 864-0235  
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|                            | ) |                               |
|                            | ) | <b>Chapter 13</b>             |
|                            | ) |                               |
| <b>Debtors.</b>            | ) | <b>CERTIFICATE OF SERVICE</b> |
| _____                      | ) |                               |

The undersigned certifies that on the 14th day of May, 2013, he served a copy of the foregoing NOTICE OF OPPORTUNITY FOR HEARING and MOTION TO MODIFY PLAN: by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail:

U.S. Bankruptcy Administrator's Office  
for the Western District of North Carolina  
402 West Trade Street, Suite 410  
Charlotte, NC 28202

U.S. Clerk of Bankruptcy Court  
401 West Trade Street  
Charlotte, NC 28202

Mr. Warren L. Tadlock  
Standing Trustee  
4600 Park Road, Ste. 101  
Charlotte, NC 28209-0201

All Parties listed on the Matrix

By: \_\_\_\_\_  
Geoffrey A. Planer, Attorney for Debtor(s)  
N.C. State Bar No.: 6338  
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